85-2082

FILED
JUN 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

IN RE Robert K Grace, petitioner

PETITION FOR A COMMON LAW WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Robert K Grace
petitioner pro se
P.O. Box 25005
St. Louis Mo 63125

Motion to proceed without the prepayment of costs pursuant to 28 U.S.C. sec. 1916

Comes Now petitioner, Robert K Grace and pursuant to 28 U.S.C. sec. 1916 requests to proceed without furnishing costs or security therefore. This motion is grounded in that the petitioner is a seaman suing within the admiralty jurisdiction of the Federal Courts, for wages, and his own benifit. 28 U.S.C. § 1333.

Wherefore, petitioner prays that this motion be granted.

Respectfully Submitted
Robert K Grace
P.O. Box 25005
St. Louis Mo 63125

Question Presented For Review

1) Should the Eighth Circuit apply Stare Decisis to reverse a denial of relief from a summary judgment which was void from its inception?

List of Parties

Robert K Grace
petitioner pro se
P.O. Box 25005
St Louis Mo 63125

Heartland Transportation
One Mercantile Center
Suite 3010
St Louis Mo 63101
origanally:
7501 S. Broadway
St Louis Mo 63111

Table of Contents

	page
Questions presented for review ----	ii
List of parties below ----------	ii
Table of Contents ----------	iii
Table of Authorities ----------	iv
Referance to Opinions and Orders --	v
Jurisdictional Statement ----------	v
Applicable Provisions of Law ------	v
Statement of the case ----------	1
Relief Sought ----------	3
Argument ----------	4
Conclusion ----------	7
Affidavit of Service ----------	8
Appendix of orders ----------	8

Motions:

Motion to proceed without prepayment of costs under 28 U.S.C. sec 1916 ----- i

Table of Authorities

	Page
Anselmo V Missouri Life Ins Co. -- 595 F2d 541 (D.C. Mo 1984)	5
Bishop V Tice, 622 F2d 349 (8th -- 1980) appeal after remand 704 F2d 417	4
FRCP 60 (b) 4 ----------	v,4
Fredericks V Georgia Pacific Corp.,- 331 FSupp 422 (3rd 1971)	4
Green V U.S. Dept of Labor, 775 F2d - 964 (8th 1985)	5
Ozark Milling Inc V Allied Mills -- 480 F2d 1014 (8th 1973)	5
Pierson V Grant, 527 F2d 161 ------ (8th 1975)	5
Supreme Court Rules 27 and 28 -----	8
28 U.S.C. section 144 ----------	1
28 U.S.C. section 1746(2) ---------	8
U.S. V Walker, 109 US 258, 265-267 - 3 SCt 277,288, 27 LEd 927	6

Reference To Orders

All pertinent orders are set forth in the appendix. None of them has been published

Jurisdictional Statement

The decree petitioner seeks review of was enterred by the U.S. Court of Appeals for the Eighth Circuit on April 18,1986 in its case No.85-1670EM. A timely petition for rehearing was filed and was denied on May 28,1986.

There is no other court but this Supreme Court in which to apply for relief from the orders. Thus, petitioner believes this Court's jurisdiction to grant a common law writ of certiorari to the Eighth Circuit is conferred by 28 U.S.C. § 1651 and Supreme Court Rule 27.4 and Rule 26 accordingly.

Applicable Provisions of Law

FRCP 60(b)4

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment,order or proceeding for the following reasons: 4) the judgment is void,"

Statement of Case

This petition comes following malicious and unlawful action by the Eighth Circuit, U.S. Court of Appeals.

Background shows that the petitioner had filed suit in District Court for the Eastern District of Missouri on November 15,1983. The action, in part, is one to establish an existance of and a breech of a maritime contract of employment. During the course of events the district court set the cause for trial on its own motion. This action by the court was in retaliation for the plaintiff moving for a change of judge under 28 U.S.C sec. 144. Later, the district court denied the requests of both parties who sought continuance.

Following all of this, the district court postponed the trial for the purpose of ruling on the defendants motion for summary judgment against the existance of the contract. Within the same ruling, the district court dismissed maritime tort claims that it had

previously granted maritime jurisdiction to, by stating that they were now pendant claims.

Appeals were filed in the Eighth Circuit from both the adverse summary judgment and a denial from a motion for relief from that judgment. The Eighth Circuit refused to take jurisdiction of the appeal from the summary judgment. That matter is now before this court on petitions for certiorari and mandamus. But then the Eighth Circuit affirmed the denial of the motion for relief.

In doing so, it not only acted contrary to this court's precident but also acted contrary to existing Eighth Circuit precident. Further, the court did not even allow the petitioner to be heard at oral argument. And then the court routinely denied the petition for rehearing.

As mentioned, the matter of the appellate jurisdiction from the summary judgment is on petitions for review now in this court. Those petitions allege that the Eighth Cir. is allowing the district court to thawrt its

jurisdiction. And they are doing that even contrary to its own stated directives which were set in place to prevent the type of hazard which is now impinging on the petitioners right to appeal. What makes the instant situation even more odd is that when the Circuit court affirmed the lower court's denial of relief from the summary judgment, it said: "The prior judgement became final when Grace failed to appeal timely." Considering all the circumstances of the procedings below, it is evident that the lower courts are acting maliciously to underscore all of petitioner's case.

Thus comes this petition for a common law writ of certiorari.

Relief Sought

1) An order reversing the Eighth Circuit's affirmance of the denial of relief from the summary judgment.

Argument

Relief from the operation of the summary judgment should have been given in the first instance in the district court. By all practical application of the law the issuance of summary judgment in the first place was a void order. FRCP 60 (b)4

As mentioned earlier, the cause of action stated in the record is one of implied contract. The existence of the contract is alleged from the circumstances of a forced resignation. This species of contract has been specifically held valid under like circumstances. See: Bishop V Tice, 622 F2d 349 (8th 1980); appeal after remand 7o4 F2d 417; Fredericks V Georgia Pacific Corp, 331 FSupp 422 (3rd 1971);citations ommitted

While in Missouri there has been no cases dealing with forced resignations giving rise to contract, the Eighth Circuit case above nevertheless substantiates the cause of action. And Missouri case law dealing with contracts and releases should be adequate to meet the burdens of litigation.

There is a Missouri case which deals with a forced resignation treating it as a wrongful discarge. But the case does not concern any allegations of contract from the circumstances as does the instant case before this court. Anselmo V Missouri Life Ins Co., 595 F2d 541 (DC Mo 1984)

What seems to be the dispute with the Eighth Cir. then is that they did not find any abuse of discretion in the lower court's ruling denying relief from the summary judgment. In a nut shell, the Eighth Circuit has long held that existence or non-existence of implied contracts are outside the scope of summary judgment. See: Green V U.S. Dept.of Labor, 775 F2d 964 (8th 1985); Ozark Milling Inc V Allied Mills Inc., 480 F2d 1014 (8th 1 1973); Pierson V Grant, 527 F2d 161,165 (8th 1975). On this bases the summary judgment ruling against the existence of petitioner's contract was void under Stare Decisis. Relief should have been granted by the district court and the court of appeals should have reversed

the lower court's denial of relief. FRCP 60 (b)4.

This court has defined a void order: "Although a court may have jurisdiction over the parties and the subject matter yet if it makes a decree which is not within the powers granted to it by the law of its organization its decree is void" U.S V Walker 109 US 258, 265-67, 3 SCt 277,288, 27 LEd 927 Thus, since the Eighth Circuit and others have particularly held that implied contracts are outside the scope of summary judgment, the Eighth Circuit should have reversed the denial of relief.

It seems, however, following the underlying case events, that the lower courts just want to get rid of petitioner's case. Not that it is unmeritorious, because that has been addressed clearly above, but because they do not want to decide the case. Usaully a court continues hearing tort claims even if it dismisses other tort claims or contract claims. But in the instant case they purposely

dismissed the maritime claims by stateing that they were pendant claims when they were not. Whether the contest that the district court has with all other courts to clear up its docket quicker than the others has anything to do with it is not sure. But the local papers revealed this.

But it is sure that the summary judgment is void and that the court of appeals not only knows that it is but is refusing to adhere to the law and reverse the denial of relief. Wherefore, this court must exercise its power of supervision if the law is to have application to all citizens and in all cases. To do less would undermine the doctrine of Stare Decisis.

Conclusion

The Court of Appeals affirmance of the denial of relief, with or without oral argument is malicious and unlawful.

Wherefore, petitioner prays that this petition be granted.

The foregoing is respectfully submitted,

Robert K Grace
petitioner pro se
Robert K Grace
P.O. Box 25005
St. Louis Mo 63125

Affidavit of Service

I Robert K Grace in accordance with Supreme Court Rules 27.4 and 28.3 and 28.5(c) hereby depose and state that service of this petition has been made on the respondants attorneys: Bryan, Cave ,McPheters,McRoberts, 500 N. Broadway, St.Louis Mo 63102. Three copies of this petition has been served by first class mail this 12 day of June 12, 1986.

Affiant further deposes and states pursuant to 28 U.S.C. §1746(2) that:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June, 12 1986

Robert K Grace
Robert K Grace

Appendix

United States Court Of Appeals
For the Eighth Circuit

No. 85-1670

Robert K Grace, appellant	*	
	*	
	*	Appeal from U.S.
V	*	District Court for
	*	the Eastern District
Heartland Transportation appellee	*	of Missouri
	*	

Submitted:April 3,1936
Filed: April 18,1986

Before HEANY, John R GIBSON, and FAGG, Cir.J.

Per Curiam.

Robert K Grace appeals the district court's denial of his motion to vacate a prior judgment under Fed.R.Civ.P. 60(b). The prior judgment became final when Grace failed to appeal timely.

Rule 60(b) provides for extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances. Warner V. Transamerica Ins Co., 739 F2d 1347 (8th 1984). This court will reverse a denial of a Rule 60(b) motion only where there has been a clear abuse of discretion. Id.; Jenkins V Klecker, 702 F2d 131,132 (8th Cir 1983) per curiam.

Finding no abuse of discretion in the district court's denial of the Rule 60(b) motion and no merit in Grace's claims on appeal, the judgment below is affirmed under 8th cir. rule 14

It is so ordered.

United States Court of Appeals
For the Eighth Circuit

No. 85-1670-EM

Robert K Grace, appellant	*	
	*	Appeal from the U.S.
V.	*	District Court for
	*	the Eastern Distrct
Heartland Transportation apellee	*	of Missouri

Appellant's petition for rehearing is denied. Appellant's motion for reconsideration is also denied.

May 28,1986

United States District Court
Eastern District of Missouri
Eastern Division

Robert K Grace plaintiff	)	
V.	)	No. 83-2602A(3)
Heartland Transportation defendant	)	

ORDER

This matter is before the court on plaintiff's motion for relief from this court's order granting summary judgment in favor of defendant. After careful consideration of the arguments and memorandum of the plaintiff, the Court remains convinced that defendant

is entitled to summary judgment. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for relief be and the same is denied.

Dated this 26th day of May, 1985

William Hungate
United States District Judge